

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WAYNE SEMINOFF,

Plaintiff,

v.

SUNG HONG, a/k/a LAWRENCE HONG, and
YOUNG HONG, a married couple; HYU HONG,
a single woman; and H & H GROUP, INC., a
Washington corporation,

Defendants.

CASE NO. C06-149RSM

ORDER

This matter is before the Court for consideration of plaintiff's renewed motion for entry of judgment of default. Dkt. # 43. The Court previously declined to enter judgment of default in the amount sought by plaintiff, as he had submitted no supporting documentation. The Court directed plaintiff, pursuant to F.R.Civ.Proc. 55 (b)(2)(B) (as amended December 1, 2007) to submit a sworn declaration and supporting documentation for his request for damages. Dkt. # 42. Plaintiff was also directed to attempt service of his application for default judgment and the supporting documentation upon defendants at their last known address. *Id.*

Having considered the renewed motion for default judgment, defendant Hyu Hong's response, and the balance of the file, together with the record of the criminal proceedings against defendant Sung (Lawrence) Hong, the Court now finds and ORDERS:

(1) Although plaintiff asserts in his motion for default judgment that "none of the defendants have

ORDER DENYING MOTION FOR DEFAULT
JUDGMENT - 1

1 appeared in this case,” that is not correct. The defendants originally appeared through counsel, and filed
2 an answer. Dkt. ## 10, 18, 21. Counsel for all parties subsequently withdrew, and the defendants failed
3 to either obtain new counsel or enter notices of appearance *pro se*. When no activity occurred in the
4 case for six months, and no Joint Status Report was filed as previously directed, the Court ordered
5 plaintiff to show cause why the action should not be dismissed for failure to prosecute. Dkt. # 36.
6 Plaintiff then moved for entry of default on the basis that defendants had failed to appear *pro se*, and the
7 default was properly entered by the Clerk of Court on the basis of the record at that time. Dkt. ## 37,
8 38.

9 (2) When plaintiff subsequently moved for default judgment in the amount of \$1,156,800.00, the
10 Court declined to enter judgment, finding that plaintiff had failed to establish, through supporting
11 documentation, that he was entitled to that amount. Dkt. # 42. As noted above, plaintiff was directed to
12 file a sworn declaration and supporting documentation for his request for damages, and to attempt service
13 of the application for default judgment on defendants at their last known address. *Id.* It appears that
14 plaintiff has not complied with this Order.

15 (3) In his renewed application for entry of judgment of default, plaintiff reduced his demand for
16 judgment to \$784,012, the amount that was mentioned in the Court’s previous Order as established in the
17 original filing papers. *See*, Order, Dkt. # 42. Instead of attaching a sworn declaration to prove the actual
18 amount of his loss, plaintiff simply stated that he “wish[ed] to use the proposed amount of \$784,012.00
19 as the judgment amount in this case, being the amount calculated by the court in it’s [sic] order dated
20 January 7, 2008.” Declaration of Wayne Seminoff, Dkt. # 44. This declaration does not meet the
21 standards set by the Court for supporting documentation.

22 (4) Plaintiff served a copy of his renewed application for entry of default judgment on all
23 defendants at one address on Lake Washington Boulevard in Kirkland, Washington.¹ Dkt. # 43. There is
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25 ¹The address at which plaintiff attempted to serve defendants is a waterfront residence described
26 in the original complaint as next door to plaintiff’s own home. Dkt. # 3, ¶ 4. The residence became the
27 centerpiece of a settlement agreement which plaintiff and defendants attempted to reach in this matter.
28 According to the settlement, Mr. Hong was to quitclaim the residence to his mother Hyo Hong, who
would then re-finance the home to secure cash to pay the settlement. This settlement was not completed,
and the status of the home is unclear. Hyo Hong, in appearing in this action, states that she now resides

1 no indication that plaintiff attempted to serve defendant Lawrence Hong at his place of incarceration or
2 through his criminal defense counsel, although plaintiff was well aware of the criminal proceedings
3 against Mr. Hong, as they arose from the same transactions that are the basis for this civil suit.

4 (5) In response to the renewed motion for entry of default, defendant Hyo Hong appeared
5 through counsel. Dkt. # 46. She states that she speaks little English, that she had no involvement with
6 her son's transactions that are at issue in this case, and that she had not previously received any notice of
7 the default. She also states that she lives at a different address than the Lake Washington Boulevard
8 address, and that she had been informed by her son's defense attorney that plaintiff was aware of the new
9 address. *Id.*

10 (5) On April 6, 2007, defendant Sung (Lawrence) Hong entered a plea of guilty to one count of
11 wire fraud, based upon the transactions that are at issue in this lawsuit. *United States v. Sung Hong*,
12 CR07-33JLR, Dkt. # 17. The plea document contains an agreement by Mr. Hong to make restitution to
13 plaintiff in the amount of \$655,834. *Id.* On January 14, 2008, judgement was entered in the criminal
14 case, sentencing Mr. Hong to a term of thirty-three months of incarceration, and ordering restitution to
15 be paid to plaintiff in the amount of \$655,834.00. *Id.*, Dkt. # 21. Restitution was due immediately, with
16 a payment schedule during and following Mr. Hong's incarceration for any unpaid balance. *Id.*

17 (6) Although this restitution order was entered in the criminal case prior to the filing of plaintiff's
18 renewed motion for default judgment, plaintiff did not mention it until he filed his reply to Hyo Hong's
19 response. In that reply, plaintiff reduced his demand for judgment to \$655,834, stating that this amount
20 is "an accurate representation of the net hard cash loss experience[d] by plaintiff." Dkt. # 47.

21 (7) In light of the above facts, the Court declines to enter a default judgment. Plaintiff has
22 neither satisfied the Court that he properly served all defendants, nor submitted a sworn declaration and
23 supporting documentation as required. He has failed to establish that he is entitled to anything more than
24 the amount of the restitution which has been ordered in the criminal case, and has failed to acknowledge
25 any amounts that have actually been paid to this point. The motion for entry of default judgment is

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elsewhere.

1 accordingly DENIED.

2 (8) The Court finds that plaintiff still has not complied with the November 1, 2006 Order
3 Regarding Initial Disclosures, Joint Status Report, and Early Settlement, nor with the November 14,
4 2007 Order to Show Cause. Dkt. ## 24, 36. The Court hereby ORDERS that the Joint Status Report
5 shall be filed on or before March 14, 2008. The parties shall consult the previous Order for instructions
6 for the form and content of the Joint Status Report. The Court directs plaintiff's attention to Section III,
7 wherein it states, "Plaintiff's counsel (or plaintiff, if *pro se*) will be responsible for starting the
8 communications needed to comply with this Order."

9 DATED this 11 Day of February 2008.

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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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